



## **DEPARTMENT OF THE TREASURY**

### **Bureau of the Fiscal Service**

#### **31 CFR Part 223**

#### **RIN 1530-AA20**

### **Surety Companies Doing Business with the United States**

**AGENCY:** Bureau of the Fiscal Service, Treasury.

**ACTION:** Notice of proposed rulemaking with request for comments.

**SUMMARY:** The Department of the Treasury, Bureau of the Fiscal Service (Treasury) administers the corporate Federal surety bond program (the program). Treasury issues certificates of authority to qualified sureties to underwrite and reinsure Federal surety bond obligations. Treasury also recognizes qualified companies as admitted reinsurers who can provide reinsurance to certified companies except on Federal surety bonds. Treasury recognizes an admitted reinsurer for the purpose of providing credit to a surety for non-Federal obligations ceded to an admitted reinsurer when valuing the assets and liabilities of a surety for Treasury certificate purposes, as appropriate. Treasury is proposing to amend its regulations to allow for recognition of additional companies as reinsurers that are excluded under the current regulations. Additionally, Treasury proposes to amend its regulations to incorporate requirements for surety companies to submit information that Treasury uses to perform financial analysis of these companies, which was previously published in supplemental guidance documents. Treasury also proposes a reorganization of the existing regulations to modernize and improve their structure.

**DATES:** Submit written comments on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by docket number FISCAL-2021-0006, using the following methods:

- Federal eRulemaking Portal: (<https://www.regulations.gov>). Follow the instructions on the

website for submitting comments.

- **Mail:** Surety Bond Branch, Bureau of the Fiscal Service, 200 Third Street, Room 110, Parkersburg, WV 26106.

**Instructions:** All submissions received must refer to Fiscal Service and docket number FISCAL-2021-0006. In general, comments received will be published on [www.regulations.gov](http://www.regulations.gov) without change, including any business or personal information provided. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Melvin Saunders, at [melvin.saunders@fiscal.treasury.gov](mailto:melvin.saunders@fiscal.treasury.gov) or 304-480-5108; Bobbi McDonald, [bobbi.mcdonald@fiscal.treasury.gov](mailto:bobbi.mcdonald@fiscal.treasury.gov) or 304-480-7098; or David Crowe at [david.crowe@fiscal.treasury.gov](mailto:david.crowe@fiscal.treasury.gov) or 304-480-8971.

**SUPPLEMENTARY INFORMATION:**

I. Background

Treasury's Bureau of the Fiscal Service is responsible for administering the corporate Federal surety bond program under the authority of 31 U.S.C. 9304-9308 and 31 CFR part 223 (part 223). Treasury publishes supplemental guidance on its requirements in annual letters posted to its website. Congress delegated to Treasury the discretion to issue a certificate of authority to a surety company if Treasury determines that: the surety's articles of incorporation authorize it to engage in the business of surety; the company has the requisite paid-up capital, cash, or equivalent assets; and the company is able to carry out its contracts. Treasury issues a certificate of authority to companies ("certified sureties") to write or reinsure Federal surety bonds. Additionally, Treasury recognizes certain companies as admitted reinsurers, i.e., companies permitted by Treasury to provide reinsurance to the certified sureties except on excess

risks that run to the United States. Treasury publishes annual lists of companies holding a certificate of authority and of companies recognized as admitted reinsurers.

Treasury published a Request for Information (RFI) on December 30, 2019.<sup>1</sup> The RFI sought input from the public on a variety of topics relating to Treasury's evaluation of surety companies, as well as the operations of the corporate Federal surety bond program. These topics included, among other things, Treasury's financial analysis methodology, its rules regarding credit for reinsurance, and the documentation it requires to perform its review of companies seeking designation and renewal as certified sureties or admitted reinsurers. The RFI closed for comments on February 13, 2020. The comments received informed, in part, Treasury's decision to develop and propose this rulemaking.

The Bureau of the Fiscal Service coordinated closely with Treasury's Federal Insurance Office in developing both the RFI and the following proposed regulations.

A. Reinsurance

Since the earliest days of the surety program, Treasury considered an evaluation of reinsurance to be an important part of its review and analysis of surety companies' abilities to carry out their contracts. Treasury Circular 105, dated December 22, 1906, instituted a limitation on surety companies that prevented them from underwriting any risk in excess of 10 percent of their paid-up capital and surplus unless the amount exceeding the 10 percent limitation was secured by "reinsurance to the satisfaction of this Department." This allowance for companies with satisfactory reinsurance applied only to risks running to parties other than the United States government; companies were not permitted to underwrite any Federal risk in excess of the 10 percent limitation.

As Treasury's regulatory requirements for surety companies became more thorough, so too did the requirements regarding reinsurance. Treasury added a requirement in 1922 that such

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<sup>1</sup> 84 FR 72138.

companies providing reinsurance file financial statements with Treasury annually. In addition to its list of certified surety companies, Treasury began publishing different lists of acceptable reinsurance companies, specifying which companies could reinsure Federal risks.

The limitation of risk, and the protection required when a risk runs to the United States, endures in part 223 today. Sections 223.10 and 223.11 specify the 10 percent limitation (now referred to as the underwriting limitation) and the available methods of protecting risk in excess of that limitation. The regulations also require surety companies to submit quarterly schedules showing their risks in excess of the limitation and describing the protective methods they have taken to cover their excess risks. A surety company may only use a company holding a certificate of authority from Treasury to reinsure risks in excess of its underwriting limitation where the United States is the obligee. For a Treasury-certified surety to receive credit for an excess risk on a non-Federal bond ceded to a reinsurer, the excess risk must be reinsured either by another certified surety, or by an admitted reinsurer.

Treasury examines a surety company's reinsurance to determine compliance with the underwriting limitation provisions of part 223, and as part of Treasury's analysis of whether the company is solvent and able to carry out its contracts. The provision at 31 CFR 223.9 states that Treasury may value the assets and liabilities of companies in its discretion, and notes that credit for reinsurance will be allowed to the surety company if the reinsurer holds a certificate of authority from Treasury or is recognized by Treasury as an admitted reinsurer. Additionally, Treasury allows credit for reinsurance ceded to recognized pools or secured by trust accounts in certain circumstances. For the surety company to receive credit for any other reinsurance, Treasury requires the reinsurer's liability to be secured with approved collateral

Treasury has not significantly updated the requirements regarding reinsurance in part 223 in many years. In that time, various changes have taken place in the regulation of insurance that affect the companies applying to Treasury for a certificate of authority or renewal of their certificate. These include the completion and entry into force of the Covered Agreements with

the European Union and the United Kingdom, providing for (among other things) the elimination of collateral requirements, under specified conditions, for reinsurers from those jurisdictions assuming business from United States ceding insurers. Relatedly, in 2011 and 2019, the National Association of Insurance Commissioners (NAIC) adopted significant amendments to its Credit for Reinsurance Model Law and Model Regulation. These amendments allow for United States insurers ceding reinsurance to certain foreign reinsurers to receive credit for the ceded reinsurance with reduced or eliminated collateral requirements. While these developments do not directly require changes to the regulations in part 223, surety companies have experienced increased difficulty in complying with Treasury's requirements for collateral while also complying with their state of domicile regulations and reducing collateral previously used to secure non-U.S. reinsurance.

#### B. Financial Analysis

Prior to 1977, Treasury's regulations outlined requirements for how it evaluated surety companies' financial statements, valued assets and liabilities, reviewed investments, and performed its financial analysis. In 1977, Treasury's approach changed. Treasury decided it would only publish high-level requirements in its regulations and, moving forward, would provide the more specific guidance regarding its financial analysis in its annual letters or other guidance. Since then, the letters have been issued on an annual basis, and modified from time-to-time, to respond to program needs or to developments in the insurance industry, as appropriate.

Over time, Treasury's annual letters have therefore become the primary source for companies seeking information on the surety bond program and the process for becoming certified or admitted to the program. Treasury intends to amend its regulations to include the more detailed information related to its financial analysis of surety companies previously published in the annual letters.

Treasury would like to provide companies, trade associations, and other members of the public the opportunity to formally comment on the proposed changes to the financial analysis and credit for reinsurance requirements in the surety bond regulations.

## II. Treasury's Proposed Changes

Treasury proposes to update part 223 in three respects:

1. Update 31 CFR 223.9, 223.11, 223.12, and 223.22 to add two new categories of reinsurers eligible for recognition: complementary reinsurers and alien reinsurers.
2. Update 31 CFR 223.9 to provide more detail, previously provided in the program's guidance, as to how Treasury conducts its financial analysis of surety companies, including the valuation of assets and liabilities.
3. Make updates to 31 CFR 223.1, 223.2, 223.3, 223.4, 223.5, 223.6, 223.7, 223.8, 223.9, 223.10, 223.11, 223.12, 223.13, 223.14, 223.15, 223.16, 223.17, 223.18, 223.19, 223.20, 223.21, and 223.22. These changes mostly reflect Treasury's effort to reorganize part 223 and to ensure it includes more detailed information for companies applying for a certificate of authority or recognition as an admitted reinsurer, or renewal thereof. As a part of this reorganization, §§ 223.4, 223.6, 223.13, and 223.14 will be reserved. These changes also include technical revisions, such as updating terminology and website addresses. Additionally, some of these changes clarify longstanding Treasury policies that may have been unclear in the current regulations or in the annual letters.

### A. New Categories of Recognized Reinsurance Companies

Treasury proposes to add two new categories of companies that can receive recognition from Treasury, provided they apply for recognition and meet Treasury's requirements. The first would be known as complementary reinsurers. Complementary reinsurers must be based in a non-U.S. jurisdiction that is subject to an in-force Covered Agreement addressing the elimination, under specified conditions, of collateral requirements and must meet other

requirements defined in the proposed regulations. Certified sureties ceding reinsurance to companies recognized as complementary reinsurers would receive credit for the ceded reinsurance without it being secured by collateral. The second category would be known as alien reinsurers. These companies must be based in a jurisdiction that the NAIC recognizes as a Qualified Jurisdiction or a Reciprocal Jurisdiction, provided that the Reciprocal Jurisdiction is not party to an in-force Covered Agreement. These companies must also meet other requirements defined specifically in the proposed regulations. Certified sureties ceding reinsurance to companies recognized as alien reinsurers would be eligible to receive credit for the ceded reinsurance to the extent allowed by the ceding company's state of domicile.

In addition to receiving credit for reinsurance ceded to complementary or alien reinsurers, certified sureties could rely on complementary reinsurers or alien reinsurers to reinsure excess risks not running to the United States.

Treasury believes these new categories of reinsurers reflect, and are informed by, developments and risk management practices that have occurred or been implemented internationally or at the state level since it last significantly updated its requirements. Treasury's current collateral requirements were imposed due to the importance to the Federal Government of ensuring that certified sureties have reliable reinsurance. While it remains essential that those companies providing reinsurance to certified sureties be steadfast in their ability and willingness to pay when called upon, Treasury has determined that a risk-based approach (rather than an approach strictly favoring U.S.-based reinsurers)) to credit for reinsurance and collateral requirements provides sufficient protection to the Federal Government. Some insurance trade associations and companies responding to Treasury's RFI pointed out that there have not been adverse effects for United States ceding insurers (or their policyholders) since the U.S. states began implementing revised NAIC model law and regulation provisions allowing reduced collateral for some non-U.S. reinsurance in 2011. Supporting this assertion, one company pointed to data from the NAIC showing that there has not been an increase in the amount of

uncollectible reinsurance in the United States since 2010. The changes that have taken place in the regulation of reinsurance collateral at the state level demonstrate that it is appropriate to evaluate reinsurance companies based on the financial strength and market conduct of the companies themselves, provided they are from jurisdictions with sufficient prudential and market conduct regulatory regimes. There is thus little increased risk to the Federal Government of allowing Treasury-certified sureties to cede reinsurance to companies from these jurisdictions with reduced or eliminated collateral that satisfy the qualifications specified in the revised rule. Treasury's proposed changes will still ensure that companies able and willing to pay when called upon will be recognized as being able to provide reinsurance for certified surety companies, but the proposed regulations acknowledge that limiting recognition to only United States domiciled companies (and requiring 100 percent collateral from all other reinsurers) is no longer the best way to do so.

Treasury's current collateral requirements and local presence requirements are not in alignment with industry trends and no longer provide sufficient benefit to the Federal Government to justify their restrictiveness. Many companies and insurance trade associations responding to the RFI stated that companies have had difficulty complying with Treasury's continued imposition of 100% collateral requirements on ceding companies' non-U.S. reinsurance, even as the ceding companies' state regulators began modernizing risk-based collateral requirements. Treasury has long considered an evaluation of a surety company's entire portfolio of reinsurance, not just the reinsurance used to protect Federal risks, to be critical to its analysis of the surety's solvency and ability to carry out its contracts. Thus, Treasury's current requirements essentially give sureties the choice of reserving capital as collateral to comply with its requirements or reducing collateral (as allowed by their state regulator) with attendant risk of losing their Treasury-certified status. Accordingly, Treasury's proposal to recognize these two new categories of reinsurers will ease the regulatory and financial burden on



certified surety companies without significantly increasing the financial risk to the Federal Government.

B. Update to Financial Analysis Methodology

Treasury proposes amending 31 CFR 223.9 to describe in greater detail the type of financial analysis it performs and incorporate certain requirements regarding the valuation of companies' assets and liabilities, credit for reinsurance, financial ratios, and other aspects of the financial analysis. These revisions to 31 CFR 223.9 reflect requirements previously published in the annual letters and supplemental guidance. Treasury expects that publishing these requirements will give companies greater clarity as to Treasury's requirements and policies moving forward.

C. Reorganization of Part 223 and Other Changes

As part of its effort to update and modernize the surety regulations, Treasury proposes a reorganization of the provisions contained in part 223. Current part 223's structure is largely unchanged since it was originally codified into the Code of Federal Regulations from Treasury circulars. The current part 223 has similar requirements, such as baseline eligibility requirements for obtaining a certificate of authority, scattered across sections. A company seeking information about the requirements for applying for a certificate of authority would need to review at least five different sections in current part 223 as well as guidance on the surety program's website, for example. Treasury proposes reorganizing part 223 to group similar or related requirements together and to make the sections of part 223 flow in a more logical order. Under these revisions, part 223 would list the requirements for an application for a certificate of authority in one section. This proposed reorganization moves requirements in part 223 without substantive change. These changes would also add to part 223 some existing guidance and instructions from the program's website, ensuring that part 223 could be the primary source of information for companies seeking information about the program's requirements.

Treasury also proposes changes throughout part 223 that are mostly technical in nature. These changes include updating organizational references, contact addresses, and website addresses, and updating terminology that may be outdated or confusing. Finally, some of the changes clarify or state longstanding Treasury policies that may have been unclear or unstated in the current part 223, the annual letters, or elsewhere on the program's website.

One such change concerns Treasury's policy that any company engaged in only insuring or reinsuring business of its parent, affiliated, or controlled unaffiliated business is not eligible to obtain a certificate of authority or recognition as a reinsurer. Such companies have historically not been able to provide Treasury with the financial documentation it requires to ensure that they are solvent and able to carry out their contracts. The proposed regulations would codify this longstanding policy.

Another change concerns Treasury's issuance of certificates of authority to certain reinsurers. Treasury historically has allowed companies to apply for certificates of authority to act only as reinsurers on Federal surety bonds, provided that such reinsurers meet all of the requirements of certified surety companies, including the statutory requirements that the reinsurers be incorporated in the United States and submit quarterly financial reports. Because Treasury has historically required the reinsurers seeking a certificate of authority to comply with all of the requirements, including the statutory requirements, applicable to other certified companies, Treasury intends to amend its regulations to codify its longstanding interpretation that certificate-holding reinsurers must meet the requirements of the surety statutes.

### III. Section by Section Analysis

#### *Section 223.1*

Current § 223.1 provides information about the scope of the regulations regarding the issuance, renewal, and revocation of certificates of authority. Proposed § 223.1 adds a baseline requirement to be eligible for a certificate of authority, that a company that exists primarily to

insure or reinsure business of its parent, affiliated company, or controlled unaffiliated business, is not eligible for a certificate of authority.

#### *Section 223.2*

Current § 223.2 provides information as to how a company can apply for a certificate of authority. Proposed § 223.2 provides an overview of the information Treasury requires in an application package for a new certificate of authority or renewal of an existing certificate of authority.

#### *Section 223.3*

Current § 223.3 discusses the criteria for the issuance of a certificate of authority. Proposed § 223.3 adjusts the timing of the annual renewal of certificates of authority, from July to August. Proposed § 223.3 would also codify Treasury's longstanding interpretation, in view of the statutory requirement that companies underwriting Federal surety bonds must be incorporated in the United States, that only companies incorporated in the United States can obtain a certificate of authority as a reinsuring company on Federal bonds. Finally, proposed § 223.3 updates unclear terminology and phrasing throughout.

#### *Section 223.4*

We propose moving the requirement in existing § 223.4 to § 223.2 as a requirement for applicants for certificates of authority. Section 223.4 will be reserved.

#### *Section 223.5*

Current § 223.5(a) requires that companies applying for authority to write surety bonds must be actively engaged in surety business. We propose moving this requirement to § 223.1 as a baseline eligibility requirement, with a modification that it applies to companies engaged in the business of writing fidelity contracts as well as surety contracts. Proposed § 223.5 also updates the list of U.S. territories where sureties may be licensed.

### *Section 223.6*

We propose that § 223.6 be reserved, as the current provision is superfluous.

### *Section 223.7*

Current § 223.7 contains a requirement regarding the investments of companies seeking or holding a certificate of authority. We propose moving this requirement to § 223.9(a), as it is a requirement regarding the assets on a company's financial statements. Proposed § 223.7 would now codify provisions from the program's annual guidance regarding instances where companies must notify Treasury of changes that may have a significant impact on the companies' financial statements or solvency.

### *Section 223.8*

Current § 223.8 requires that companies holding a certificate of authority must submit annual and quarterly financial statements on the forms utilized by the NAIC. We propose moving some of existing § 223.8 to § 223.2 as an application requirement. Proposed § 223.8 contains more detailed information regarding certified companies' quarterly reporting requirements.

### *Section 223.9*

Current § 223.9 states that Treasury may value the assets and liabilities of companies in its discretion. It states that credit for reinsurance will be granted for business ceded to other certified companies or admitted reinsurers. Proposed § 223.9 would be retitled "Determination of financial condition and other required information" and provides greater detail into how Treasury conducts its financial analysis than is currently provided in § 223.9. Treasury will still issue supplemental guidance as needed, but proposed § 223.9 would become the primary source for information as to Treasury's current requirements regarding admissibility of assets, treatment of securities and investments, ratios, financial trends, and other important items from a company's financial statements. These changes to § 223.9 largely reflect policies that have been

published for many years in Treasury’s annual letter. Proposed § 223.9 also highlights the changes to Treasury’s approach to credit for reinsurance, in allowing credit for the two new categories of recognized reinsurers (in addition to admitted reinsurers) discussed in proposed § 223.12, below.

#### *Section 223.10*

Current § 223.10 defines the limitation of risk, known as the underwriting limitation. Proposed § 223.10 would also contain a requirement moved from § 223.13 regarding how Treasury determines the underwriting limitation. Proposed § 223.10 also clarifies Treasury’s definition of the term “single risk.”

#### *Section 223.11*

Current § 223.11(b) provides the requirements for how a surety company can use reinsurance to protect excess risks. Proposed § 223.11(b) is updated to note that excess risks not running to the United States can be protected by the recognized reinsurers in proposed § 223.12, below. Proposed § 223.11(b) updates form titles and terminology. Proposed § 223.11(c) codifies in regulation a longstanding Treasury policy previously published in the annual letters that collateral used to secure amounts in excess of a company’s underwriting limitation cannot also be used to secure reinsurance not authorized by Treasury to obtain credit for reinsurance under § 223.9. Proposed § 223.11 also breaks out and renumbers the paragraphs in § 223.11(b) for ease of reading and clarity. Proposed § 223.11 also updates unclear language and terminology throughout.

#### *Section 223.12*

Section 223.12 establishes the application requirements and standards for a company to be recognized by Treasury as an admitted reinsurer for surety companies doing business with the United States. Proposed § 223.12 maintains the standards for recognition as an admitted reinsurer, while clarifying some existing terminology and adding the timeframe for applications.

Proposed § 223.12 adds two new categories of reinsurers eligible for recognition:

complementary reinsurers and alien reinsurers.

To obtain recognition as a complementary reinsurer, a company must be from a non-U.S. jurisdiction that is subject to an in-force Covered Agreement. The company must also be recognized by at least one U.S. state as a Reciprocal Jurisdiction Reinsurer, as defined by the NAIC Credit for Reinsurance Model Law and Model Regulation.

To obtain recognition as an alien reinsurer, a company must be from a non-U.S. jurisdiction that is recognized by the NAIC as a Qualified Jurisdiction or as a Reciprocal Jurisdiction, provided the Reciprocal Jurisdiction is not party to an in-force Covered Agreement. The company must also be recognized by at least one state as a Certified Reinsurer or Reciprocal Jurisdiction Reinsurer, as those terms are defined by the NAIC, to obtain recognition by Treasury as an alien reinsurer. Proposed § 223.12, taken in concert with proposed § 223.11, would thus allow a certified surety to rely on one or more admitted reinsurers, complementary reinsurers, and/or alien reinsurers to provide reinsurance for the surety's excess risks not running to the United States, in addition to the other acceptable methods already described in § 223.11. Additionally, proposed § 223.12, in concert with proposed § 223.9, would recognize that certified surety companies may obtain credit for reinsurance for amounts ceded to other certified companies, admitted reinsurers, complementary reinsurers, or alien reinsurers. Under current §§ 223.12 and 223.9, amounts ceded to other certified companies and admitted reinsurers are eligible for full credit without the posting of collateral. Under proposed § 223.12, in concert with Proposed § 223.9, amounts ceded to complementary reinsurers would also be eligible for full credit without the posting of collateral, provided the amounts were ceded after the complementary reinsurer has been recognized by at least one U.S. state regulator as a Reciprocal Jurisdiction Reinsurer from a jurisdiction that is subject to an in-force Covered Agreement. Under proposed §§ 223.12 and 223.9, amounts ceded to alien reinsurers would be eligible for credit to the extent such credit is authorized by the surety's state of domicile regulator. Because

some alien reinsurers may be eligible for full credit for reinsurance under state law, proposed § 223.12 would also allow amounts ceded to those reinsurers to be eligible for full credit without the posting of collateral. In reviewing applications for recognition as an alien reinsurer (or renewal of such recognition), Treasury will consider all relevant financial data to determine if it is appropriate to grant credit for reinsurance to the full extent allowed by the ceding company's state of domicile. Additionally, proposed § 223.9 contains a provision that states that if Treasury determines that either the alien reinsurer or the certified surety may be unable to carry out its obligations, Treasury may require additional collateral for ceding companies to receive credit for reinsurance to the extent allowed by the state.

Proposed § 223.12 also codifies Treasury's policy that companies that exist to only reinsure business of their parent, affiliated, or controlled unaffiliated business are not eligible for recognition as a reinsurer under the program.

#### *Section 223.13*

Current § 223.13 requires that when applying a certified surety company underwriting limitation, the full penalty of the obligation will be regarded as the liability, and lists exceptions to that general rule. We propose moving this requirement to § 223.10 to group requirements regarding the underwriting limitation together in the same section. We propose reserving this section.

#### *Section 223.14*

Current § 223.14 requires certified surety companies to report to Treasury on their excess risks and protective measures taken. We propose moving this requirement to § 223.8 so it is grouped with other ongoing, quarterly reporting requirements for certified companies. We propose reserving this section.

#### *Section 223.15*

Section 223.15 explains how Treasury determines a company's paid-up capital and surplus. Proposed § 223.15 clarifies that this provision applies to companies holding or seeking a certificate of authority or to companies recognized or seeking to be recognized as admitted reinsurers.

#### *Section 223.16*

Section 223.16 describes Treasury's list of companies holding certificates of authority. Proposed § 223.16 updates terminology and website addresses, and also changes the publication date of the list from July to August.

#### *Section 223.17*

Section 223.17 describes the circumstances under which an agency official can decline to accept a bond underwritten by a certified surety. Proposed § 223.17 updates unclear language.

#### *Section 223.18*

Section 223.18 describes the ways in which Treasury may initiate revocation proceedings against a certified company. Proposed § 223.18 updates some phrasing to enhance clarity.

#### *Section 223.19*

Section 223.19 describes Treasury-initiated revocation proceedings. Proposed § 223.19 updates some phrasing to enhance clarity.

#### *Section 223.20*

Section 223.20 describes agency-initiated revocation proceedings. Proposed § 223.20 updates unclear phrasing in § 223.20(b)(1) and (h)(8). Proposed § 223.20 also updates section 223.20(h)(9) by removing references to the Treasury Financial Manual and the Annual Letter to Executive Heads of Surety Companies.



### *Section 223.21*

Section 223.21 describes how a company may become reinstated after non-renewal or revocation of its certificate of authority. Proposed § 223.21 updates unclear language and codifies Treasury's practice of allowing a waiver of the one-year waiting period in limited instances where a company demonstrates exigent circumstances that warrant such a waiver.

### *Section 223.22*

Section 223.22 describes the categories of fees that Treasury charges companies applying for certification or recognition, or renewal of their status. Proposed § 223.22 adds that fees will be charged for new applications and applications for renewal of recognition as a complementary or alien reinsurer.

### DISTRIBUTION CHART FOR REVISED PART 223

Old Section	New Section
223.3(a)(1)(i)	223.2(a)(3) and (a)(8)
223.4	223.2(a)(10)
223.5(a)	223.1(b)
223.6	Removed
223.7	223.9(a)(1)
223.8(a)	223.2(a)(8) 223.2(b)(4)
223.8(b)	223.8(a)(5)
223.13	223.10(b)
223.14	223.8(a)(2)

### IV. Procedural Analysis

### *Request for Comment*

Treasury welcomes comments on all aspects of this proposed rulemaking, but particularly on the specific questions below:

1. Does Treasury's proposal to recognize two new classes of reinsurers benefit the surety industry without significantly increasing risks?
2. Should Treasury consider alternative approaches to credit for reinsurance than those proposed in §§ 223.9, 223.11, and 223.12?
3. In §§ 223.2, 223.7, 223.8, and 223.9, Treasury proposes publishing, without substantive change, several requirements that have been previously contained in annual guidance or on the surety program's website. Should Treasury consider modifying these regulations or not codifying them in the regulations?
4. Does the proposed reorganization of part 223 make the regulations clearer and easier to follow, and would additional changes more effectively accomplish this goal?
5. Are there additional changes Treasury should consider to better help the surety program accomplish its mission of evaluating and approving surety companies to do business with the United States?

### *Regulatory Planning and Review*

The proposed rule does not meet the criteria for a "significant" regulatory action under Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

### *Regulatory Flexibility Act Analysis*

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed changes allowing for recognition of additional reinsurance companies would not increase any regulatory burden or have an economic

impact on small entities. The proposed rule adopts criteria for recognition outlined in the Covered Agreements and in the NAIC Credit for Reinsurance Model Law. Accordingly, by the time these proposed rules are published and become effective, reinsurance companies from relevant non-U.S. jurisdictions seeking to assume business from U.S. ceding insurers will already be complying with similar financial requirements. Additionally, adherence to these requirements is only required for companies seeking recognition by Treasury; participation in the program is voluntary. The proposed rule changes regarding Treasury's financial analysis mainly codify existing requirements and policies of which Treasury-certified sureties were already aware. Therefore, this proposed rule will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

#### *Unfunded Mandates Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to prepare budgetary impact statements before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. This proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, Treasury has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (Act) requires that collections of information prescribed in the proposed rules be submitted to the Office of Management and Budget (OMB)

for review and approval.<sup>2</sup> In accordance with that requirement, Treasury has submitted the collection of information contained in this notice of proposed rulemaking for review. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the collection of information may be submitted electronically to [oir.submission@omb.eop.gov](mailto:oir.submission@omb.eop.gov), or may be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, DC, 20503; and to the Surety Bond Branch, Bureau of the Fiscal Service, at the address specified at the beginning of this document.

The collection of information in the proposed amendments is contained in proposed § 223.12(i) and (j). The proposed amendments require companies applying for initial recognition as a complementary reinsurer to submit to Treasury all information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the two most recently completed calendar years. For renewal of such recognition, companies will submit all semi-annual and annual filing information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the most recently completed calendar year. Companies applying for initial recognition as an alien reinsurer will submit to Treasury all information provided to any U.S. state regulator in the two most recently completed calendar years. For renewal of such recognition, companies will submit all annual filing information provided to any U.S. state regulator in the most recently completed calendar year.

Treasury invites further comments on: (1) whether the proposed collection of information is necessary for the proper performance of Treasury's functions, including whether the information has practical utility; (2) the accuracy of Treasury's estimate of the burden; (3)

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<sup>2</sup> 44 U.S.C. 3507(d).

enhancement of the quality, utility, and clarity of information to be collected; and (4) minimizing the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology.

Estimated total annual reporting burden: 400 hours.

Estimated annual number of respondents: 100.

Estimated annual frequency of response: 1.

### Proposed Regulations

#### **List of Subjects in 31 CFR Part 223**

Financial analysis, Reinsurance, Surety bonds.

For the reasons set forth in the preamble, we propose to amend 31 CFR part 223 as set forth below:

#### **PART 223 - SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES**

1. The authority citation for part 223 continues to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 9304-9308.

2. Revise § 223.1 to read as follows:

##### **§ 223.1 Certificate of authority.**

(a) The regulations in this part govern the issuance, renewal, and revocation by the Secretary of the Treasury, acting through the U.S. Department of the Treasury, Bureau of the Fiscal Service (Treasury), of certificates of authority to bonding companies to do business with the United States as sureties on, or reinsurers of, Federal surety bonds (hereinafter “bonds” or “obligations”) under the authority of 31 U.S.C. 9304-9308 and this part, and the acceptance of such obligations.

(b) A company applying for authority to write surety bonds in favor of the United States must be engaged in the business of writing surety or fidelity contracts at the time of its application to

Treasury, whether or not also making contracts in other classes of insurance, but shall not be engaged in any type or class of business not authorized by its charter or the laws of the state in which the company is incorporated. It must be the intention of the company to engage actively in the execution of surety bonds or fidelity contracts in favor of the United States.

(c) A company is not eligible for a certificate of authority if it only insures or reinsures risks of its parent, affiliated, or controlled unaffiliated business, or is deemed by Treasury to be primarily engaged in self-insurance.

3. Revise § 223.2 to read as follows:

**§ 223.2 Application for certificate of authority.**

(a) *Application for issuance of certificate of authority.* Every company not currently holding a certificate of authority wishing to apply for a certificate of authority shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company shall file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(1) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22;

(2) A written request for a certificate of authority, signed by an officer of the company.

This request must indicate:

(i) Whether the company has previously applied for a certificate of authority from Treasury and, if so, the date of the previous application; and

(ii) Whether Treasury has ever previously issued the company a certificate of authority, the reason for termination of its certificate of authority, and the applicable dates;

(3) A certified copy of its charter or articles of incorporation showing that it is duly authorized to conduct the business referenced under 31 U.S.C. 9304(a)(2) and a statement from an officer of the company certifying that:

(i) The company is authorized to transact surety business; and

(ii) If granted a certificate of authority, there are no restrictions upon the company preventing it from being able to execute and guarantee bonds and undertakings in judicial proceedings, and guarantee contracts to which the United States is a party;

(4) A listing of the names of the company's current officers and directors as of the date of application, including a biographical affidavit of each officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(5) A memorandum setting forth:

(i) A comprehensive statement of the company's method of operation, including, but not limited to, underwriting guidelines, claims adjustment procedures, reinsurance philosophy, and control over collateral;

(ii) The classes of business in which it engages;

(iii) Any special underwriting agreements, management agreements, or pooling agreements in force. Copies of agreements must be included with the memorandum; and

(iv) Present plans of the company as to the types of Federal bonds it intends to write, the anticipated annual premium volume of the Federal bonds, and the geographical areas in which it intends to write the Federal bonds;

(6) A certified copy of a license from its state of incorporation and a completed Surety License Form (Form No. FS 2208);

(7) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(8) A statement of its financial condition, as of the close of the last two years preceding the date of application, on the annual statement form of the National Association of Insurance Commissioners (hereinafter referred to in this part as NAIC) with all Schedules and Exhibits completed, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The annual financial statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(9) The Insurance Regulatory Information System (hereinafter referred to in this part as IRIS) ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC for the last two years preceding the date of application;

(10) A written statement signed by the Insurance Commissioner or other proper financial officer of any state attesting that the company maintains on deposit legal investments having a current market value of not less than \$100,000 for the protection of claimants, including all of its policyholders in the U.S.;

(11) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) for the last two years preceding the date of application;

(12) Copies of all reinsurance treaties currently in force along with a completed Summary of Reinsurance Treaties, per instructions provided online at <https://www.fiscal.treasury.gov/surety-bonds/>;



(13) A completed Schedule of Excess Risks form (Form No. FS 285-A) as of the date of the application;

(14) A Statement of Actuarial Opinion as of the close of the last two years preceding the date of application provided by an independent qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC; and

(15) Such other evidence as Treasury may request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts. Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (a)(1) through (14) of this section.

(b) *Applications for renewal of certificate of authority.* Every company wishing to apply for the annual renewal of its certificate of authority shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company shall file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(1) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22;

(2) A completed Surety License Form (Form No. FS 2208) and a certified copy of the licenses from any states indicated on the Surety License Form that were not indicated on the company's most recent form;

(3) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(4) A statement of its financial condition, as of the close of the preceding year, on the annual statement form of the NAIC with all Schedules and Exhibits completed, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(5) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC, as of the close of the preceding year;

(6) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) as of the close of the preceding year;

(7) A completed Schedule of Excess Risks form (Form No. FS 285-A) as of the close of the preceding year;

(8) A Statement of Actuarial Opinion as of the close of the preceding year provided by an independent qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC;

(9) A listing of the names of the company's current officers and directors as of the close of the preceding year, including a biographical affidavit of any new officer and director for whom a biographical affidavit was not previously provided, per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(10) A Report of Federal Business Written/or Assumed and Outstanding as of the close of the preceding year, per instructions provided online at <https://www.fiscal.treasury.gov/surety-bonds/>; and

(11) Such other evidence as Treasury may request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts.

Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (b)(1) through (10) of this section.

4. Revise § 223.3 to read as follows:

**§ 223.3 Issuance of certificates of authority.**

(a) In determining whether to issue or renew a certificate of authority, Treasury will evaluate the whole application package under § 223.2, the financial condition of the company as determined under § 223.9, the past history of the company, and any further evidence or information that Treasury may require the company to submit (at the company's expense).

(b) A certificate of authority will be effective for a term that expires on the last day of the next July. All such statutory requirements and regulatory requirements under this part are continuing obligations, and any certificate issued is expressly subject to continuing compliance with such requirements. The certificate of authority will be renewed annually on the first day of August, *provided* the company remains qualified under the law, the regulations in this part, and other pertinent Treasury requirements, *and* the company submits the fee required under § 223.22 by March 1st of each year.

(c) If a company meets the requirements for a certificate of authority as an acceptable surety on Federal bonds in all respects except it is limited to reinsure business only, it may be issued a certificate of authority as a reinsuring company on Federal bonds. The fees for initial application and renewal of a certificate as a reinsuring company will be the same as the fees for a certificate of authority as an acceptable surety on Federal bonds.

**§ 223.4 [Removed and Reserved]**

5. Remove and reserve § 223.4.
6. Revise § 223.5 to read as follows:

**§ 223.5 Business.**

A company holding a certificate of authority, or its agent, may only execute (sign or otherwise validate) a surety bond in favor of the United States in a state where it is licensed to do surety business. It need not be licensed in the state or other area in which the principal resides or where the contract is to be performed. The term *other area* includes the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

**§ 223.6 [Removed and Reserved]**

7. Remove and reserve § 223.6.
8. Revise § 223.7 to read as follows:

**§ 223.7 Notification of changes.**

(a) Every company certified under this part or recognized as an admitted reinsurer pursuant to § 223.12(h) must notify Treasury of changes that have a significant impact on its financial statements or solvency. The following is not intended to be an exhaustive list of all changes that Treasury may require to be reported and may evaluate as part of this analysis of the company. Treasury will publish supplemental guidance on additional information that may be required. Every company certified under this part or recognized as an admitted reinsurer pursuant to § 223.12(h) must notify Treasury of the following:

- (1) *Capital changes.* Companies must forward to Treasury, when available, approvals by the insurance authorities of the company's lead state regulator when changes in paid-up capital or contributions/withdrawals to surplus have occurred;
- (2) *Changes in stock ownership.* Stock insurance companies must provide a statement signed and sworn to by the Secretary or Assistant Secretary and by the Treasurer or

Assistant Treasurer of the company each time any person (whether an individual, corporation, or organization of any kind) becomes owner of more than 5 percent of any class of outstanding stock issued by the company;

(3) *Mergers, transfer, assumption, and group/pool restructuring.* Companies must notify Treasury at least six months prior to any merger, consolidation, transfer, assumption, material group or pool restructuring, or name changes in which the reporting company is involved. The company must furnish to Treasury copies or agreements or documents pertaining to the same, as approved by the insurance authorities of the company's lead state regulator; and

(4) *Charters and bylaws amendments.* Whenever a company amends its charter or bylaws it must submit a certified copy of the amended charter or bylaws to Treasury.

(b) Noncompliance with this section may result in Treasury denying a company's application for its certificate of authority, its recognition as an admitted reinsurer, renewal of its certificate of authority, renewal of its recognition as an admitted reinsurer, or in Treasury revoking a company's certificate of authority or recognition as an admitted reinsurer.

9. Revise § 223.8 to read as follows:

**§ 223.8 Quarterly financial reporting requirements.**

Every company certified under this part is required to file the following quarterly with Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>:

(a) A statement of its financial condition, as of the close of the preceding quarter, on the quarterly statement form of the NAIC with all Schedules and Exhibits completed, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and

above all liabilities, in the case of a mutual insurance company. The Quarterly Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(b) A completed Schedule of Excess Risks form (Form No. FS 285-A) as of the close of the preceding quarter;

(c) A Report of Federal Business Written/or Assumed and Outstanding as of the close of the preceding quarter, per instructions provided online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(d) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(e) A listing of the names of the company's current officers and directors as of the close of the preceding quarter, including a biographical affidavit of each new officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>; and

(f) Such other evidence as Treasury may request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts. Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (a) through (e) of this section along with the due dates for quarterly reporting.

10. Revise § 223.9 to read as follows:

**§ 223.9 Determination of financial condition and other required information.**

In determining the financial condition of every company applying for a certificate of authority or renewal of a certificate of authority under this part, Treasury will generally compute its assets and liabilities in accordance with paragraphs (a) through (f) of this section, provided that

Treasury may exercise discretion in valuing the assets and liabilities of such companies. While paragraphs (a) through (f) of this section specify how Treasury will value certain classes of assets and liabilities and the analysis that Treasury will perform, they are not intended to be an exhaustive list of all assets and liabilities that Treasury may require to be reported and may evaluate as part of this analysis. Treasury will annually publish supplemental guidance on the financial analysis performed by Treasury, including applicable ratios and acceptable ranges for ratios.

(a) *Assets--(1) General criteria for admissibility.* The cash capital and other funds included in the financial statement must be safely invested in accordance with the laws of the state in which it is incorporated. Admissible assets must be reported in U.S. Dollars and are generally limited to investments in cash, cash equivalents, short term investments, mortgage loans (within certain limits), and real property necessary for the conduct of a company's business. In cases where an investment (other than U.S. Government securities and securities of affiliates or subsidiaries) exceeds 10 percent of the total admitted assets, Treasury may require additional supporting documentation as needed on a case-by-case basis in order for the asset to be admissible. Additionally, Treasury considers normal account balances (such as, but not limited to, investment income due and accrued, agents' balances and premiums receivables, reinsurance recoverables on paid losses, and funds held by or deposited with ceding reinsuring companies) to be admissible provided they meet Treasury's standards. In order to be admissible, normal account balances may be evaluated for transactional substance, quality, and liquidity. Some assets that may be admissible under codification and/or certain state permitted practices may require supporting documentation as needed on a case-by-case basis in order to be admissible under Treasury's criteria. Assets resulting from reinsurance transactions must meet the credit for reinsurance standards listed under paragraph (c) of this section.

(2) *Securities.* Bonds, unaffiliated common stocks, and unaffiliated preferred stocks must be valued and reported in accordance with the NAIC's Accounting Practices and

Procedures Manual (as updated or amended from time to time) and the NAIC Securities Valuation Office (SVO). Those with an investment grade designation will be admissible and those with a non-investment grade designation will be considered on a case-by-case basis.

(i) *All other securities.* The value of all other securities should be valued as of December 31 and reported in U.S. Dollars. For securities that do not have a SVO designation or have a SVO non-investment grade designation and are significant for Treasury purposes, Treasury may consider, if it deems appropriate, other relevant data (e.g., prospectus, marketability/liquidity information, internal investment strategies/philosophies) and perform an analysis to determine whether the securities meet Treasury's criteria for admissibility.

(ii) *Securities of controlled companies.* Investments in subsidiaries, controlled entities, and affiliated entities must be reported in accordance with the NAIC Accounting Practices and Procedures Manual (as updated or amended from time to time).

(A) *Other insurance companies.* Companies owning securities of other insurance companies, which are under the same direction and control as the reporting company, must furnish copies of the NAIC File Upload of the subsidiaries. The assets of these subsidiaries will be analyzed according to the criteria set forth in this section.

(B) *Non-insurance companies.* Companies owning securities of non-insurance companies, which are under the same direction and control as the reporting company, must furnish copies of independently audited financial statements of such companies as of the reporting date.



(3) *Real estate and mortgages.* Only real estate essential to the operating needs of the company for conducting its business, and conventional first mortgage loans on unencumbered, improved, or productive real estate located within the United States, are admissible. These must be reported in accordance with the NAIC's Accounting Practices and Procedures Manual (as updated or amended from time to time). The real estate and mortgaged property must be supported by an appraisal report that includes the information and computations normally used in arriving at a competent appraised value. In instances where the aggregate values exceed 20 percent of the policyholders' surplus, Treasury may, if it deems appropriate, require additional supporting documentation.

(b) *Minimum bail reserve requirements.* Companies transacting surety bail business must submit a schedule showing bail premiums in force, bail liability, and the amount of any associated unearned premium reserve.

(c) *Reinsurance.* (1) Companies are required to submit Treasury Schedule F (Treasury Form No. TFS 6314) reflecting information in the company's annual statements. Credit for reinsurance may be taken for reinsurance in all classes of risk provided it is ceded to the following companies:

- (i) Companies holding a current certificate of authority from Treasury;
- (ii) Non-Treasury certified or recognized parents, subsidiaries, and/or affiliates if the parent, subsidiary, and/or affiliate participate in a pooling agreement with the Treasury certified/recognized company and Treasury determines that the pool is financially solvent;
- (iii) Admitted reinsurers as defined under § 223.12(h);
- (iv) Complementary reinsurers as defined under § 223.12(i);

(v) Alien reinsurers as defined under § 223.12(j), up to the extent credit is given for reinsurance ceded to the alien reinsurer by the ceding company's state of domicile (subject to paragraph (c)(3) of this section); and

(vi) An instrumentality or agency of the United States that is permitted by Federal law or regulation to execute reinsurance contracts.

(2) Treasury will give credit for reinsurance not covered in paragraph (c)(1) of this section, to the extent of funds withheld or letters of credit or trust agreements from unauthorized companies, provided the company advises Treasury of the amount of funds held, letters of credit posted or funds secured in trust for each company. Treasury will also give credit for trust account assets associated with multi-beneficiary trust agreements established and maintained in the United States by overseas accredited or trustee reinsurers listed online at <https://www.fiscal.treasury.gov/surety-bonds/>, to the extent the unauthorized ceded business is covered by these trust account assets.

(3) If Treasury, after its review of the financial documentation submitted by an alien reinsurer recognized pursuant to § 223.12(j) and of the financial documentation submitted by the ceding company, determines that either company may be unable to carry out its obligations, Treasury may require additional collateral for the ceding company to receive credit for reinsurance to the extent credit is given for reinsurance ceded to the Alien Reinsurer by the ceding company's state of domicile.

(d) *Risk based capital (RBC)*. Treasury uses RBC in determining the financial solvency of companies, together with such companies' overall financial results, ratios, and trends.

Companies must maintain RBC results that fall within acceptable ranges as established by the NAIC or provide a satisfactory explanation for results that do not.

(e) *Financial ratios*. Treasury uses the NAIC IRIS ratios to measure companies' solvency, profitability, and liquidity. Companies must maintain results for these ratios that fall within

acceptable ranges as established by the NAIC or provide a satisfactory explanation for results that do not.

(f) *Financial results and trends.* Treasury analyzes financial results from annual and quarterly financial statements required under this part for evidence of negative financial results or trends. Treasury may require companies to submit additional documentation or explanation regarding financial statements with evidence of negative financial results or trends such as decreasing policyholders' surplus, large underwriting losses, negative cashflows, or unsatisfactory IRIS ratio results.

(g) *Noncompliance.* Noncompliance with paragraphs (a) through (f) of this section may result in Treasury denying a company's application for its certificate of authority, or renewal of its certificate, or in Treasury revoking a company's certificate.

11. Revise § 223.10 to read as follows:

**§ 223.10 Limitation of risk.**

(a) Except as provided in § 223.11, no company holding a certificate of authority shall underwrite any single risk on any bond or policy on behalf of any individual, firm, association, or corporation, whether or not the United States is interested as a party thereto, the amount of which is greater than 10 percent of the paid-up capital and surplus of such company, as determined by Treasury. Such figure is hereinafter referred to as the underwriting limitation. For purposes of this part, "single risk" is defined as the total risk under one bond or policy regardless of the number of individual risks under that bond or policy.

(b) In determining the underwriting limitation, the full penalty of any surety and fidelity obligation will be regarded as the liability, and no offset will be allowed on account of any estimate of risk that is less than such full penalty, except in the following cases:

- (1) Appeal bonds; in which case the liability will be regarded as the amount of the judgment appealed from, plus 10 percent of said amount to cover interest and costs;
- (2) Bonds of executors, administrators, trustees, guardians, and other fiduciaries, where the penalty of the bond or other obligation is fixed in excess of the estimated value of the estate; in which cases the estimated value of the estate, upon which the penalty of the bond was fixed, will be regarded as the liability;
- (3) Indemnifying agreements executed by sole heirs or beneficiaries of an estate releasing the surety from liability;
- (4) Contract bonds given in excess of the amount of the contract; in which cases the amount of the contract will be regarded as the liability; or
- (5) Bonds for banks or trust companies as principals, conditioned to repay moneys on deposit, whereby pursuant to any law or decree of a court, the amount to be deposited shall be less than the penalty of the bond; in which cases the maximum amount on deposit at any one time will be regarded as the liability.

12. Revise § 223.11 to read as follows:

**§ 223.11 Limitation of risk: Protective methods.**

The limitation of risk prescribed in § 223.10 may be complied with by the following methods:

- (a) *Coinsurance*. Two or more companies may underwrite a single risk on any bond or policy, the amount of which does not exceed their aggregate underwriting limitations. Each company must limit its liability upon the face of the bond or policy to an amount which must be within its underwriting limitation.
- (b) *Reinsurance*--(1) *Bonds running to the United States*. (i) With respect to all bonds running to the United States, a company writing such bonds must reinsure liability in excess of the

underwriting limitation with one or more companies holding a certificate of authority from Treasury within 45 days from the date of execution and delivery of the bond. Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company. Where reinsurance is contemplated, Federal agencies may accept a bond from the direct writing company in satisfaction of the total bond requirement even though it may exceed the direct writing company's underwriting limitation. Within the 45-day period, the direct writing company shall furnish to the Federal agency any requested reinsurance agreements. However, a Federal agency may, in its discretion, require that the direct writing company obtain reinsurance within a lesser period than 45 days, and may require the direct writing company to provide completely executed reinsurance agreements before making a final determination that any bond is acceptable.

(ii) Direct writing companies may use reinsurance to protect liability in excess of their underwriting limitation for bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 3131, as amended) covering contracts for the construction, alteration, or repair of any public building or public work of the United States, as well as other types of Federal bonds. Use of reinsurance or coinsurance to protect such bonds is at the discretion of the direct writing company. In addition to complying with the requirements of paragraph (b)(1)(i) of this section, the direct writing company must execute the following reinsurance agreement forms: Standard Form 273 (Reinsurance Agreement for a Bonds Statute Performance Bond), Standard Form 274 (Reinsurance Agreement for a Bonds Statute Payment Bond), and Standard Form 275 (Reinsurance Agreement in Favor of the United States). These forms are available on the General Services Administration website at [www.gsa.gov](http://www.gsa.gov).

(2) *Bonds not running to the United States.* A company holding a certificate of authority from Treasury writing risks covered by bonds or policies not running to the United States

must reinsure liability in excess of its underwriting limitation within 45 days from the date of execution and delivery of the bond or policy with any of:

(i) One or more companies holding a certificate of authority from Treasury;

(ii) One or more companies recognized as a reinsurer in accordance with § 223.12;

(iii) A pool, association, etc., to the extent that it is composed of such companies;  
or

(iv) An instrumentality or agency of the United States that is permitted by Federal law or regulation to execute reinsurance contracts.

(3) *Limitation.* No certificate-holding company may cede to a reinsuring company recognized under § 223.12 any single risk in excess of 10 percent of the latter company's paid-up capital and surplus.

(c) *Other methods.* With respect to all risks other than Miller Act performance and payment bonds running to the United States, which must be coinsured or reinsured in accordance with paragraph (a) or (b)(1)(ii) of this section respectively, the excess liability may be protected:

(1) By the deposit with the company in pledge, or by conveyance to it in trust for its protection, of assets admitted by Treasury, the current market value of which is at least equal to the liability in excess of its underwriting limitation. Assets used to protect excess liability pursuant to this paragraph (c) cannot also be used to obtain credit for reinsurance pursuant to § 223.9(c); or

(2) If such obligation was incurred on behalf of or on account of a fiduciary holding property in a trust capacity, by a joint control agreement providing that the whole or a sufficient portion of the property so held may not be disposed of or pledged in any way without the consent of the insuring company.

13. Revise § 223.12 to read as follows:

**§ 223.12 Recognition as reinsurer.**

(a) *Use of recognized reinsurers.* Companies holding a certificate of authority may:

(1) Receive credit for reinsurance ceded to a reinsurer recognized pursuant to this section, as described in § 223.9(c), and

(2) Protect liability in excess of their underwriting limit on risks not running to the United States by reinsuring the excess liability with a reinsurer recognized pursuant to this section.

(b) *Application.* Every company applying for recognition by Treasury as one of the categories of reinsurers in paragraphs (c) through (j) of this section, or annual renewal of such recognition, shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The applicant company must submit the documentation and must meet the requirements as outlined in this section and in supplemental guidance published by Treasury on its website.

(c) *Treasury recognition.* Recognition by Treasury will be effective for a term that expires on the last day of the following October. A list of reinsuring companies so recognized by Treasury will be published online at <https://www.fiscal.treasury.gov/surety-bonds/>.

(d) *Notice to Treasury.* Each company recognized pursuant to this section shall immediately notify Treasury if a U.S. state takes action to suspend or revoke the company's license or its status or eligibility as a Certified Reinsurer or Reciprocal Jurisdiction Reinsurer, or if the company notifies a U.S. state that a supervisory authority in its domiciliary jurisdiction takes regulatory action against it for serious noncompliance with applicable law (as determined by the supervisory authority in its domiciliary jurisdiction).

(e) *Eligibility.* A company is not eligible for recognition under this section if it only insures or reinsures risks of its parent, affiliated, or controlled unaffiliated business, or is deemed by Treasury to be primarily engaged in self-insurance.

(f) *Guidance.* Treasury may issue supplemental guidance regarding the timing, form, content, and its analysis of the submissions required pursuant to this section. Such guidance will be posted on its website.

(g) *Noncompliance.* Noncompliance with the requirements of this section may result in a company's application for recognition, or for renewal of its recognition, being denied.

(h) *Admitted reinsurers--(1) Application for recognition by U.S. company.* Any company organized under the laws of the United States or of any state thereof, wishing to apply for recognition as an admitted reinsurer of surety companies doing business with the United States, shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company shall file the following data with Treasury and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(i) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22;

(ii) A written request for recognition as an admitted reinsurer, signed by an officer of the company. This request must indicate:

(A) The reason for applying for recognition;

(B) Whether the company has ever previously applied for recognition as an admitted reinsurer, whether Treasury approved the application, and the applicable dates; and



(C) If Treasury previously approved the company for recognition as an admitted reinsurer, the reason for termination of its recognition and the applicable date;

(iii) A certified copy of its charter or articles of incorporation with all amendments as of the date of application showing the legal name of the company and that it is authorized to write reinsurance;

(iv) A listing of the names of the company's current officers and directors as of the date of application, including a biographical affidavit of each officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(v) A certified copy of a license from any one state in which it has been authorized to do business showing its authority to write reinsurance and/or other lines of insurance;

(vi) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(vii) Annual statements of its financial condition, as of the close of the last two years preceding the date of application, on the annual statement form of the NAIC with all Schedules and Exhibits completed, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(viii) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC for the last two years preceding the date of application;

(ix) A memorandum setting forth the company's method of operation, including lines of business written and the company's underwriting and claims philosophy;

(x) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) for two years preceding the date of application;

(xi) A Statement of Actuarial Opinion as of the close of the last two years preceding the date of application provided by an independent qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC; and

(xii) Such other evidence as Treasury may request to establish that the company is solvent and able to meet the continuing obligation to carry out its contracts.

Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (h)(1)(i) through (xi) of this section.

(2) *Application by a U.S. branch.* A U.S. branch of a non-U.S. company applying for such recognition must file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(i) The submissions listed in paragraphs (h)(1)(i) through (xii) of this section, except that the financial statement of such branch shall show that it has net assets of not less than \$250,000 over and above all liabilities; and

(ii) Evidence satisfactory to Treasury to establish that it has on deposit in the United States not less than \$250,000 available to its policyholders and creditors in the United States.

(3) *Application for renewal of recognition as an admitted reinsurer.* Any company recognized pursuant to paragraphs (h)(1) or (2) of this section wishing to apply for renewal of its recognition shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company must file the following data with Treasury and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(i) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22;

(ii) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(iii) Annual statements of its financial condition, as of the close of the preceding year, on the annual statement form of the NAIC with all Schedules and Exhibits completed, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(iv) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC as of the close of the preceding year;

(v) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) as of the close of the preceding year;

(vi) A Statement of Actuarial Opinion as of the close of the preceding year provided by an independent qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC;

(vii) A listing of the names of the company's current officers and directors as of the close of the preceding year, including a biographical affidavit of each new officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>; and

(viii) Such other evidence as Treasury may request to establish that the company is solvent and able to meet the continuing obligation to carry out its contracts.

Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (h)(3)(i) through (vii) of this section.

(i) *Complementary reinsurers.* Any company may apply for recognition as a complementary reinsurer or annual renewal of such recognition provided the company is licensed to write reinsurance by and has its head office in (or is domiciled in) a non-U.S. jurisdiction that is subject to an in-force Covered Agreement entered into with the United States pursuant to 31 U.S.C. 313-314, which Covered Agreement addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in a U.S. state or for allowing the ceding insurer to recognize credit for reinsurance. To obtain such recognition, the company must submit to Treasury the fee in accordance with the provisions of § 223.22 and must:

- (1) Meet and maintain all capital and surplus, solvency, and market conduct requirements under the applicable Covered Agreement;
- (2) Be recognized by at least one U.S. state as a Reciprocal Jurisdiction Reinsurer, as defined by the NAIC, and submit proof of such recognition; and
- (3) Submit to Treasury:

- (i) For initial applications for recognition, all information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the two most recently completed calendar years.

- (ii) For applications for renewal of recognition, all semi-annual and annual filing information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the most recently completed calendar year.

- (iii) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22.

(j) *Alien reinsurers.* Any company may apply for recognition or annual renewal of such recognition as an alien reinsurer, provided it is licensed to write reinsurance by, and has its head office or domicile in, a non-U.S. jurisdiction that is recognized by the NAIC as a Qualified Jurisdiction or as a Reciprocal Jurisdiction, provided that the Reciprocal Jurisdiction is not party to an in-force Covered Agreement as described in paragraph (i) of this section. To obtain such recognition, the company must submit to Treasury the fee in accordance with the provisions of § 223.22 and must:

- (1) Be recognized by at least one U.S. state as a “Certified Reinsurer” or a “Reciprocal Jurisdiction Reinsurer,” as defined by the NAIC or state law, and submit proof of such recognition;
- (2) Meet and maintain all capital and surplus, market conduct, and other requirements for eligibility as a “Certified Reinsurer” or “Reciprocal Jurisdiction Reinsurer” in accordance with the law and regulation of any U.S. state granting it such recognition; and
- (3) Submit to Treasury:
  - (i) For initial applications for recognition, all information provided to any U.S. state regulator in the two most recently completed calendar years.
  - (ii) For applications for renewal of such recognition, all annual filing information provided to any U.S. state regulator in the most recently completed calendar year.
  - (iii) Receipt or proof of payment of the application fee in accordance with the provisions of § 223.22.

**§ 223.13 [Removed and Reserved]**

14. Remove and reserve § 223.13.

**§ 223.14 [Removed and Reserved]**

15. Remove and reserve § 223.14.

16. Revise § 223.15 to read as follows:

**§ 223.15 Paid-up capital and surplus for Treasury rating purposes; how determined.**

Treasury determines the amount of paid-up capital and surplus of any company holding or seeking a certificate of authority or recognized (or seeking recognition) as an admitted reinsurer

pursuant to § 223.12(h) on an insurance accounting basis under the regulations in this part, from the company's financial statements and other information, or by such examination of the company at its own expense as Treasury may deem appropriate.

17. Revise the first three sentences of § 223.16 to read as follows:

**§ 223.16 List of certificate holding companies.**

A list of certificate holding companies is published annually as of August 1 in Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, with information as to underwriting limitations, areas in which listed sureties are licensed to transact surety business, and other details. If Treasury shall take any exceptions to the financial statements submitted by a company, before issuing Department Circular 570, Treasury shall give a company due notice of such exceptions. Copies of the Circular are available at <https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html>, or from the Surety Bonds Program, upon request. \*\*\*

18. Amend § 223.17 by revising paragraphs (b)(1)(iii) and (iv) to read as follows:

**§ 223.17 Acceptance and non-acceptance of bonds.**

\*\*\*\*\*

(b)\*\*\*

(1)\*\*\*

(iii) Provide the company with an opportunity to rebut the stated reasons or cause;  
and

(iv) Provide the company with an opportunity to cure the stated reasons or cause.

\*\*\*\*\*

19. Amend § 223.18 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

**§ 223.18 Revocation.**

(a) Treasury may initiate a revocation proceeding against a Treasury-certified company in one of two ways:

(1) Treasury, of its own accord, under § 223.19, may initiate revocation proceedings against the company when it has reason to believe that the company is not complying with 31 U.S.C. 9304-9308 and/or the regulations under this part; or

\*\*\*\*\*

20. Amend § 223.19 by revising the introductory text and paragraph (b)(2) to read as follows:

**§ 223.19 Treasury-initiated revocation proceedings.**

Whenever Treasury has reason to believe that a company is not complying with the requirements of 31 U.S.C. 9304-9308 and/or the regulations under this part, including but not limited to a failure to satisfy corporate and financial standards, Treasury shall:

\*\*\*\*\*

(b)\*\*\*

(2) The company responded, was provided an opportunity to demonstrate or achieve compliance, and failed to do so.

21. Amend § 223.20 by revising paragraphs (b)(1) and (h)(8) and (9) to read as follows:

**§ 223.20 Revocation proceedings initiated by Treasury upon receipt of an agency complaint.**

\*\*\*\*\*



(b) \*\*\*

(1) The agency has determined, consistent with agency authorities, the principal is in default on the obligation covered by the bond. Alternatively, if the default has been litigated, documentation indicating a court of competent jurisdiction has determined the principal is in default;

\*\*\*\*\*

(h) \*\*\*

(8) The formal adjudication standards under the Administrative Procedure Act, 5 U.S.C. 554, 556, and 557, do not apply to the informal hearing or adjudication process.

(9) Treasury may promulgate additional procedural guidance governing the conduct of informal hearings.

\*\*\*\*\*

22. Revise § 223.21 to read as follows:

**§ 223.21 Reinstatement.**

If, after one year from the date that Treasury notifies the company of its decision to decline to renew or revoke the certificate of authority of a company under this part, the company can demonstrate that the basis for the non-renewal or revocation has been cured, as determined by Treasury in its discretion, and that it can comply with, and does meet, all continuing requirements for certification under 31 U.S.C. 9304-9308 and this part, the company may submit an application to Treasury for reinstatement or reissuance of a certificate of authority, which will be granted without prejudice if all such requirements are met. Treasury may waive the one year waiting period for good cause shown, as determined by Treasury in its sole discretion.

23. Revise § 223.22 to read as follows:

**§ 223.22 Fees for service of the Treasury Department.**

(a) Fees shall be imposed and collected, for the services listed in paragraphs (a)(1) through (6) of this section that are performed by Treasury, regardless of whether the action requested is granted or denied. An online payment portal is provided at <https://www.fiscal.treasury.gov/surety-bonds/>. The amount of the fee will be based on which of the following categories of service is requested:

- (1) Examination of a company's application for a certificate of authority as an acceptable surety on Federal bonds or for a certificate of authority as an acceptable reinsuring company on such bonds (see § 223.2(a));
- (2) Examination of a company's application for recognition as an admitted reinsurer of surety companies doing business with the United States (see § 223.12(h));
- (3) Examination of a company's application for recognition as a complementary reinsurer of surety companies doing business with the United States (see § 223.12(i));
- (4) Examination of a company's application for recognition as an alien reinsurer of surety companies doing business with the United States (see § 223.12(j));
- (5) Determination of a company's continuing qualifications for annual renewal of its certificate of authority (see § 223.2(b)); or
- (6) Determination of a company's continuing qualifications for annual renewal of its authority as an admitted reinsurer, complementary reinsurer, or alien reinsurer (see § 223.12).

(b) In a given year a uniform fee will be collected from every company requesting a particular category of service, e.g., determination of a company's continuing qualifications for annual renewal of its certificate of authority. However, Treasury reserves the right to redetermine the

amounts of fees annually. Fees are determined in accordance with Office of Management and Budget Circular A-25, as amended.

(c) Specific fee information may be obtained from the Surety Bonds Program, or online at <https://www.fiscal.treasury.gov/files/surety-bonds/user-fees.pdf>. In addition, a notice of the amount of a fee referred to in paragraphs (a)(1) through (6) of this section will be published in the Federal Register as each change in such fee is made.

**David A. Lebryk,**

*Fiscal Assistant Secretary.*

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